

³ The Board notes that, following the issuance of the March 27, 2015 OWCP decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 30, 2013 appellant, then a 38-year-old carrier assistant, filed an occupational disease claim (Form CA-2) alleging that he sustained posterior tibial tendon insufficiency and Achilles equinus contracture causally related to factors of his federal employment. He became aware of his condition on May 6, 2013 and attributed it to his federal employment on June 25, 2013. Appellant voluntarily resigned from employment on June 25, 2013.

In an August 19, 2013 statement submitted with his claim, appellant described his work duties, including casing mail, loading mail into his vehicle, and delivering mail either on foot or in a vehicle depending on his route assignment. He related that he lifted up to 70 pounds and performed repeated bending and stooping. Appellant also climbed hills and stairs and delivered his route over terrain that included grass, pavement, cement, or loose gravel that could be wet, dry, or snow covered.

On September 3, 2013 Dr. Jeffrey Rocco, a Board-certified orthopedic surgeon, related that on July 1, 2013 appellant underwent a left foot reconstruction to treat posterior tibial tendon insufficiency and Achilles equinus. He reviewed his description of his work duties and related, "It is my medical opinion that [his] posterior tibial tendon insufficiency was precipitated by his work requirements. Prior to the start of his current job [he] was asymptomatic in his [left] foot."⁴ The distances, forces, and repetitive loading of his left foot subsequently led to failure of the posterior tibial tendon and certainly exacerbated pain and swelling in and around that left foot and ankle." Dr. Rocco opined that appellant was totally disabled beginning July 1, 2013, but could now return to sedentary employment.

The employing establishment, by letter dated October 4, 2013, controverted appellant's claim. It advised that he only worked from April 6 to June 25, 2013, participated in training for the first two weeks of employment, failed to mention any injury to his supervisors, filed his claim three months after he stopped work, and engaged in motocross racing.

On October 10, 2013 OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and work factors.⁵

Appellant's supervisor, in a statement dated October 21, 2013, related that appellant participated in motocross racing before working for the employing establishment. The supervisor asserted that appellant's job duties required lifting up to 70 pounds, pushing equipment from the building to a vehicle, and loading and unloading mail from a vehicle.

⁴ Dr. Rocco indicated that appellant was asymptomatic in his right rather than his left foot. However, this appears to be a typographical error.

⁵ In an October 11, 2013 letter, OWCP informed appellant that it had deleted his file number xxxxxx114 because it was a duplicate of a previous case created under file number xxxxxx627, currently under appeal. It moved the contents of the duplicate case to the current case record.

By decision dated January 3, 2014, OWCP denied appellant's claim as the medical evidence failed to establish that he sustained a diagnosed condition causally related to the accepted employment factors. It found that Dr. Rocco's opinion was not sufficiently rationalized to establish that his left foot condition arose from employment.

On February 3, 2014 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

At the telephone hearing, held on January 6, 2015, appellant described his motocross activities from 2002 to 2004 and resulting injuries to his right knee, sternum, ribs, and hands. He denied sustaining a foot injury from motocross racing, but did acknowledge a fracture of his left foot in 2012 and an injury of his left toe in 2012 or 2013. Appellant's supervisor, during his training, instructed him to move quickly from house to house.

In a January 9, 2014 postoperative report, Dr. Rocco indicated that appellant underwent left foot surgery on December 27, 2013 to remove hardware.⁶ He released him to work five hours per day without restrictions for the next four weeks with an anticipated return to full-time employment in one month.

On January 30, 2014 Dr. Colby Frost, a podiatrist, performed a left peroneal tendon debridement and repair.⁷ In a May 7, 2014 report, the podiatrist found that appellant continued to have pain at the insertion of the peroneus brevis tendon, left, and explained to him that his tendon injury prior to surgery was significant and would take time to heal.

Dr. Rocco, in an addendum report dated February 4, 2015, noted that appellant's work requirements included "repetitive stair climbing, walking on uneven surfaces ... going down stairs, and carrying relatively heavy loads in his mailbag." He opined that these "specific activities precipitated [appellant's] posterior tibial tendon."

In a statement dated February 10, 2015, appellant's supervisor related that carriers could cut across lawns if it was safe.

By decision dated March 27, 2015, an OWCP hearing representative affirmed as modified the January 3, 2014 decision. He thus determined that he had not factually established all of the work factors to which he attributed his condition.

On appeal appellant's counsel argues that Dr. Rocco's September 3, 2013 report supports that appellant's work duties caused an injury in the performance of duty. He notes that whether appellant was trained to jump off porches or not is not the relevant issue as he attributed his condition to a variety of work duties. Counsel further maintains that appellant did not experience a left foot injury from motocross activities from 2002 to 2004

⁶ Appellant submitted physical therapy notes dated September 12 to 24, 2013.

⁷ In an August 25, 2014 report, a nurse practitioner noted that appellant sustained an injury in June 2013 as a result of stepping off a porch in the performance of duty and diagnosed pain in joint involving ankle and foot, neuralgia, neuritis, and radiculitis, opioid-type dependence, episodic use, and reflex sympathetic dystrophy of the lower limb.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹⁰

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;¹¹ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;¹² and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹³

An employee’s statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁴ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee’s statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee’s statement in determining whether a *prima facie* case has been established.¹⁵

⁸ *Supra* note 2.

⁹ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *See Ellen L. Noble*, 55 ECAB 530 (2004).

¹¹ *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹² *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁴ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹⁵ *Betty J. Smith*, 54 ECAB 174 (2002).

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁶ must be one of reasonable medical certainty¹⁷ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁸

ANALYSIS

Appellant attributed his left foot condition to the performance of his work duties, including lifting up to 70 pounds, climbing hills, and going up and down stairs. He further delivered mail over varied terrain consisting of loose gravel, grass, cement, and pavement which could be dry, wet, or snow covered depending on the weather. At the hearing, appellant advised that a supervisor instructed him to move quickly from house to house. OWCP denied appellant's claim after finding that he had not factually established the occurrence of the implicated work factors.

Appellant has the burden to establish the occurrence of the employment factors to which he attributes his condition.¹⁹ The Board finds that the evidence is sufficient to establish that his occupational exposure occurred as alleged. It is undisputed that in the course of his employment he lifted up to 70 pounds, delivered mail over various terrains, climbed hills and stairs, and cut through yards. The Board finds that appellant adequately described the work duties to which he attributed his condition and that the record does not contain evidence sufficient to refute his depiction of his implicated work factors.²⁰

Given that appellant has established the work factors he identified as causing his condition, the question becomes whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors. He submitted medical evidence diagnosing a left foot condition. The Board will remand the case for OWCP to issue a *de novo* decision as to whether the medical evidence is sufficient to establish that appellant sustained a left foot condition as a result of the established work factors.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁶ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁷ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁸ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁹ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

²⁰ *See A.R.*, Docket No. 15-1716 (issued November 17, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 17, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board